IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2533 OF 2006

Shri Kishor Kisan Mhaskar ..Applicant
V/s.
The State of Maharashtra ..Respondent

Mr.Rajan Salvi for the applicant.

Mr.K.V.Saste APP for the State.

Coram : R.S.Mohite,J

Date : 13.7.2006.

PC

1. This is an application for grant of bail. The applicant has been shown as an accused in C.R.No.77/2005 registered at Goregaon police station, Dist. Raigad for offences punishable under Sections 302, 376 & 201 r/w 34 of IPC. The offence is registered on the complaint made by one Chandrakant Madhav Mhaskar who was the father of the young girl by name Vaishali. Vaishali was aged about 16 years and she was studying in the N.M.Joshi Vidyalaya. On 24.11.2005 Vaishali was to return back from her School on the way back she met her sister Geeta at about 4.15 P.M. Geeta then proceeded to the house of her relative. Vaishali however, proceeded in the direction of the house but since she did not reach home by 7.00 P.M., her parents made enquiries in the village and later on

to the help of lanterns and torches she was searched for in the adjoining fields. In the night they found her school bag in one of the fields. On 25.11.2005 at about 6.30 A.M. in a fallow land belonging to one Dagadu Goregaonkar, a dead body of Vaishali was found with several injuries all over her body including her private part. Surface wounds and injuries on her body were as under :-

1. Face swollen, blood dried on face, traingular depressed contused abrasion seen at Rt.Eye area laterally of size 3 x 2 cms. appros. eyes swollen, closed partially. Upper lip-contused abrasion. Swollen more on left side fact on Rt.side is more contused than Lt.side.

2. Ligature mark (imprint) is seen around the neck completely encircled anteriorly of 4-5 cms width & posteriorly 3-4 cms width, slightly oblique c severe contusion reddish black appearance.

3. Multiple contused abrasions at back Rt. & buttocks Rt.reddish blue discolouration at Rt.Back. The contused abrasions are parellal to vertebral columns, contused abrasions are seen on Lt.side of back but less prominent than Rt.side.

4. Rt. upper extremity-multiple contused abrasion at shoulder, arm, elbow joint-posterio laterally reddish blue appearance. Lt.wrist watch imprint, contused abrasion posterior laterally Lt.arm.

5. Lt.breast-abrasion below nipple, nipple is contused, swollen.

6. Multiple contused abrasions at chest and abdomen.

7. Contused abrasions at both thighs anteriorly and posteriorly.

8. Both knees having contused abrasions at bony prominences, reddish blue discolouration.

2. Her clothes were found torn. On this basis

later on her father lodged a complaint about the rape and murder of her daughter and the police registered the offence in question. It appears that thereafter the police recorded the statement of one Vijay Talwatkar on 27.11.2005. This witness Vijay Talwatkar is a child witness aged 14 years and is a cowheard boy. He claims to have seen the incident where Vaishali met her sister on the road and saw them going different directions. The father of the girl formed a suspicion that the applicant must have been involved in the matter. On this basis applicant was arrested on 6.12.2005 and at the time of his arrest it was noticed that he has several abrasions on his body. This fact was noted in the arrest panchanama. After the arrest of the applicant, police recorded another supplimentary statement of Mr.Vijay Talwatkar on 7.5.2005 and this witness stated that he had seen the applicant coming from the direction of the field with blood on his hands on 24.11.2005 at 5.00 P.M. That the applicant had threatened to kill him and his parents unless he kept quite. The applicant was also sent for medical examination and as many as 12 abrasions were found on his person. Doctor has opined that age of these injuries were 7 to 15 days and were possible by pointed object and nail. These abrasions were found on his forearm, back, knee, arm, shoulders, fingers and another parts of the body. The police have also recorded the statement of one Rani to whom the

present applicant has made extra judicial confession of having killed Vaishali. In my view one strong circumstance against the present applicant is the 12 abrasions which were found on the person of the present applicant. However, there is another disturbing aspect of this case. It appears that semen was found on the odhani of the girl. When they were sent for DNA analysis, it found that this semen do not match with the DNA found in the blood sample of the present applicant. This gives rise to the possibility that there is some other person involved either singularly or alongwith the present applicant. Charge-sheet was filed on 1.3.2006 and the DNA report was received on 21.12.2005. In my view, on receipt of such DNA report, investigating officer should have immediately come to the conclusion that there was a strong likelihood that another person or persons have been involved in this gruesome crime. Even the large number of injuries suffered by the deceased clearly indicate that she was brutally overpowered. The number of injuries also suggest that there was possibility of more than one person involved. Though charge-sheet was filed in this case, I feel that the matter requires further investigation specially when the DNA and the semen stains found on the odhani of the girl does not match with the DNA of the present applicant. Taking into consideration the seriousness of the crime, it would be desirable that further

investigation shall be conducted by DCB CID through their district office. It is also found that the nail clippings of Vaishali were staying with blood. Since the odhani of Vaishali was sent to DNA analysis, the investigating officer ought to have sent these nail clippings for determination of the DNA group found on the nail clippings. This would have the strong evidence against the present applicant or exaggerated the possibility of his involvement as it is the case of the prosecution that he had suffered abrasions due to nail scratchings by the victim. It is expected that such proper investigation can be conducted by the new investigating agency. Further investigation shall be carried out expeditiously. Investigating agency will be at liberty to file further report before the trial Court. It is made clear that this investigation will be in the nature of additional investigation over and above the investigation carried out. The applicant will be at liberty to make fresh application for bail after such report is filed in the Court. Application stands disposed off.

(R.S.Mohite,J)